BELLSOUTH OPPOSITION

WC DOCKET NO. 02-238

EXHIBIT J

PART 5 OF 5

V. Capability to Submit Orders Electronically

Herein, we address whether BellSouth should be required to provide Supra with the capability to submit orders for all products and service via electronic means.

1. Arguments

Supra witness Ramos contends that BellSouth refused to provide information regarding its network, which resulted in Supra being restricted in developing its position on this issue through pre-filed testimony. Supra's position, therefore, is based upon its understanding of and response to BellSouth's position, according to the witness.

As with numerous other issues, Supra witness Ramos believes that "Parity Provisions" should be a consideration in this issue. The parity argument for this issue, according to witness Ramos, is the same as that put forth in Section S, the BellSouth retail and CLEC OSS systems.

Witness Ramos believes that "the dual system of OSS (i.e., one system for the ILEC and another for the ALEC) which are common today are inherently unequal." The witness believes that BellSouth witness Pate has made false statements with respect to the capabilities of certain CLEC OSS platforms. He offers evidence in the form of select interrogatories from FPSC Docket No. 980119-TP to support his contentions. The interrogatories primarily focus on edit-checking capabilities, but the final one more directly addresses the specific issue of manual versus electronic ordering. Witness Ramos asserts that BellSouth's witness Pate contradicts prior testimony and that BellSouth can, in fact, process its complex service requests electronically. Though not explicitly stated, the Supra witness infers that a similar functionality (i.e., the ability to process complex orders via electronic means) is not offered to ALECs.

BellSouth witness Pate states that BellSouth's own retail operations make use of manual ordering processes. He states that the same manual processes that BellSouth employs for its retail services are also used for ALEC services. The witness offers:

> Many of BellSouth's retail services, primarily complex services, involve substantial manual handling by BellSouth account teams for BellSouth's own retail

> customers. Non-discriminatory access to certain functions for ALECs legitimately may involve manual processes for these same functions. Therefore, these processes are in compliance with the Act and the FCC's rules.

The witness asserts that complex services fall primarily into two categories, "Non-designed" and "Designed," with the latter involving special engineering and provisioning. The witness states that BellSouth's MultiServ® service is an example of a "Designed" complex service. Witness Pate offers contrasting flow chart diagrams to demonstrate the manual handling necessary to process retail and wholesale orders for MultiServ® service. Witness Pate also contends that wholesale orders for certain UNEs and resold services also necessitate a degree of manual handling:

> Some Unbundled Network Elements ("UNEs") and complex resold services require manual handling. The manual processes used by BellSouth are accomplished in substantially the same time and manner as the processes used for BellSouth's complex retail services. The specialized and complicated nature of complex services, together with the relatively low volume for them relative to basic exchange services, renders them less suitable for mechanization, whether for resale or retail applications. Complex, variable processes are difficult to mechanize, and BellSouth has concluded that mechanizing many low volume complex retail services for its own retail operations would be an imprudent business decision, in that the benefits of mechanization would not justify the cost.

In concluding his argument, witness Pate states that our decision in the AT&T arbitration (Docket No. 000731-TP) suggests that the appropriate mechanism to address this issue is the Change Control Process (CCP). He asserts that this issue should first be addressed through the CCP . . . and "[i]t appears that no such change control request has been submitted to the CCP." He states that Supra is a registered member of the CCP, but has not participated or taken advantage of its membership by submitting change requests, for this or any other matter.

Supra offered limited testimony specific to this issue in the form of rebuttal to statements of the BellSouth witness. Supra witness Ramos asserts that BellSouth witness Pate was untruthful in making sworn statements regarding the capabilities

of certain CLEC OSS platforms. He offers evidence in the form of select interrogatories from FPSC Docket No. 980119-TP to support his contentions. Docket No. 980119-TP was a complaint matter which involved Supra's prior interconnection agreement with BellSouth. The interrogatories the witness offers are not responsive to the issue at hand, which pertains to whether BellSouth should be required to provide Supra with the capability to submit orders for all wholesale products and service via electronic means. Witness Ramos, however, interprets the final interrogatory offered to demonstrate that BellSouth processes its complex service requests electronically. The relevance of the referenced text to this current matter is, nevertheless, unclear. We are reluctant, therefore, to give significant credence to the excerpt.

Though BellSouth's MultiServ® service was the only specific example noted, witness Pate states that "BellSouth has concluded that mechanizing many low volume complex retail services for its own retail operations would be an imprudent business decision, in that the benefits of mechanization would not justify the cost." We agree. Witness Pate goes so far as to state that some UNE orders and complex services "require" manual handling. We believe that BellSouth will be involved in some degree of manual handling for complex orders regardless of whether the order is wholesale (e.g., to an ALEC) or retail.

2. Decision

Some level of manual processing is likely to exist for both wholesale and retail orders, simply because of the complexities of modern telecommunications. Witness Pate states that "[b]ecause the same manual processes are in place for both ALEC [wholesale] and BellSouth retail orders, the processes are non-discriminatory and competitively neutral." We agree. As long as BellSouth provisions orders for complex services for itself and ALECs in a like fashion and in substantially the same time and manner, it meets the non-discriminatory requirement of the Act. However, while noting BellSouth's concern over the suitability and the cost/benefit relationship of mechanization, we believe that a more comprehensive evaluation of electronic order submission may be helpful, perhaps in the context of a generic proceeding, which would enable us to more fully consider the policy implications for electronic order submission. Based on this record, however, BellSouth shall not be required to provide Supra with the capability to submit orders electronically for all wholesale services and elements, as long as BellSouth

provisions orders for complex services for itself and ALECs in a like fashion and in substantially the same time and manner.

W. Manual Intervention on Electronically Submitted Orders

In this section, we address under what circumstances, if any, should there be manual intervention on electronically submitted orders.

1. Arguments

Supra witness Ramos contends that BellSouth refused to provide information regarding its network, which resulted in Supra being restricted in developing its position on this issue through pre-filed testimony.

Witness Ramos believes that "BellSouth has an electronic interface for every occasion." He asserts that BellSouth does not submit manual orders for any of its own products.

BellSouth witness Pate is, however, uncertain what Supra hopes to achieve in this issue, since its position was not set forth through prior meetings or testimony. The witness offers two possibilities, as follows:

> [Either] (A) Supra is requesting that all complete and correct LSRs submitted electronically flow through BellSouth systems without manual intervention [; or] (B) Supra is asking that BellSouth relieve Supra of its responsibility to submit a complete and accurate LSR.

BellSouth's position on (A) is that it provides non-discriminatory access to OSS systems, but non-discriminatory access does not require that all LSRs be submitted electronically and not involve any manual handling. "BellSouth's own retail processes often involve manual processes," states the witness. According to witness Pate, the manual handling consideration is directly related to complex orders. He states:

> The orders at issue here are those that the ALEC may submit electronically, but fall out by design. In most cases, these orders are complex orders. For certain orders, BellSouth has, for the ease of the ALEC, allowed them to be submitted electronically even though such orders are then manually processed by BellSouth . . . Because the same manual processes are in place for

> both ALEC and BellSouth retail orders, the processes are competitively neutral, which is exactly what both the Act and the FCC require.

Witness Pate states that we have previously ruled on (A) in the recent AT&T arbitration. In that matter, we found that to accommodate the requested actions (i.e., allow additional order types to flow through without manual handling), BellSouth would be required to modify its systems, and that the proper mechanism to achieve this would be through the Change Control Process (CCP). Quoting the finding, witness Pate states, "the system in place does not create disparity for AT&T regarding order submission as stated earlier. Therefore this issue is currently best suited to be pursued through the CCP process." Finally, the witness states that BellSouth is willing to incorporate the same language in Supra's agreement as agreed to in the AT&T case.

With respect to (B), he states that Supra should not expect BellSouth to assume what is clearly Supra's obligation. Witness Pate stresses that "Supra must understand its obligation to provide a complete and accurate LSR." Witness Pate believes that the language BellSouth and WorldCom agreed to could be incorporated here to resolve (B).

2. Decision

Supra presented limited testimony on this matter. Nonetheless, we evaluated the available testimony to consider under what circumstances, if any, there should be manual intervention on electronically submitted orders.

Aspects of this issue are enveloped in the issues addressed in Sections S and V of this Order. Again, Supra witness Ramos states that "Parity Provisions" should be a consideration in this issue. We agree, but find that BellSouth is meeting its obligations set forth in the Act.

Supra is requesting that all complete and correct LSRs that it submits electronically flow through BellSouth systems without manual intervention, based on its belief that BellSouth's own retail orders do this. Supra believes "parity" considerations of the Act obligate BellSouth to treat Supra in a like manner. However, not all complete and correct LSRs that are submitted electronically flow through without manual intervention, according to BellSouth's witness Pate.

Based on the testimony which affirms that the same manual processes are in place for both ALEC and BellSouth retail orders and that BellSouth processes the orders in a non-discriminatory manner, we agree with witness Pate's assertion that BellSouth's practices with respect to manual handling are competitively neutral. Unless or until such practices change for all ALECs, when processing Supra's complex orders, BellSouth should be permitted to manually process those orders that would be processed similarly for retail orders.

With regard to (B), asking BellSouth to relieve Supra of its responsibility to submit a complete and accurate LSR is unreasonable. Supra should be capable of fulfilling its obligation with respect to submitting complete and accurate LSRs to BellSouth.
BellSouth shall be allowed to manually intervene on Supra's electronically submitted orders in the same manner as it does for its own retail orders.

X. Sharing of the Spectrum on a Local Loop

Here, we consider whether or not Supra should be allowed to share with a third party the spectrum on a local loop for voice and data when Supra Telecom purchases a loop/port combination and if so, under what rates, terms, and conditions. In addition, based on the testimony presented, we address whether or not BellSouth must provide its DSL service to Supra's voice customers served in a UNE-P arrangement.

1. Arguments

According to the testimony of Supra witness Nilson, Supra requests that BellSouth be required to 1) allow Supra access to the spectrum on a local loop for voice and data when Supra purchases loop/port combinations; and 2) continue to provide data services to customers who currently have such services, after the customer decides to switch to Supra's voice services.

The testimony of BellSouth witness Cox leads us to believe that there is not a dispute regarding Supra's first request. Specifically, witness Cox notes that BellSouth's position on this issue does not prevent Supra from having access to the high frequency portion of the loop. She states:

> When Supra purchases UNE-P from BellSouth, it becomes the owner of all the features, functions and

> capabilities that the switch and loop is capable of providing. This includes calling features and capabilities, carrier pre-subscription, the ability to bill switched access charges associated with this service, and access to both the high and low frequency spectrums of the loop.

Based on this testimony, Supra is not precluded from accessing both the high and low frequency spectrum of the loop when it purchases UNE-P. Accordingly, this matter need not be further addressed.

With regard to Supra's second request, the parties do not agree. According to BellSouth witness Cox, BellSouth is not obligated to provide its DSL service on a line where it is not the voice provider. She notes that the FCC addressed this issue in its line sharing order and clearly stated that incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing UNE-P combinations. Specifically, witness Cox points to the FCC's Line Sharing Reconsideration Order (FCC 01-26), where it stated:

> We deny, however, AT&T's request that the Commission clarify that incumbent LECs must continue to provide xDSL service in the event customers choose to obtain service from a competing carrier on the same line because we find that the Line Sharing Order contained no such requirement.

FCC Order No. 01-26, CC Docket Nos. 98-147, 96-98 at 126. Furthermore, she argues that the FCC expressly stated that the *Line Sharing Order* does not require that the LECs provide xDSL service when they are no longer the voice provider.

Witness Cox also notes that we previously ruled on this issue. In Order No. PSC-01-0824-FOF-TP, issued March 20, 2001, we stated:

> While we acknowledge WorldCom's concern regarding the status of the DSL service over a shared loop when WorldCom wins the voice service from BellSouth, we believe the FCC addressed this situation in its Line Sharing Order. . . . We believe the FCC requires BellSouth to provide line sharing only over loops where BellSouth is the voice provider. If WorldCom purchases the UNE-P, WorldCom becomes the voice provider over that loop/port combination. Therefore, BellSouth is no

> longer required to provide line sharing over that loop/port combination.

Order at p. 51. Witness Cox maintains that contrary to Supra's position, we should again find consistent with the FCC and its previous rulings, that BellSouth is not obligated to provide DSL services for customers who switch to Supra's voice services. She contends that nothing precludes Supra from entering into a line splitting arrangement with another carrier to provide DSL services to Supra's voice customers. As such, she believes that the language that BellSouth has proposed for inclusion in the new Agreement is consistent with the FCC's rules and this Commission's decisions.

With regard to this issue, Supra witness Nilson adopted the testimony of Gregory Follensbee, formerly of AT&T, filed in Docket No. 000731-TP. According to the direct testimony adopted by witness Nilson, Supra seeks to gain reasonable and nondiscriminatory access to the "high frequency spectrum" portion of the local loops that it leases from BellSouth to provide services to customers based upon the UNE-P architecture. As previously noted, based on the testimony of BellSouth witness Cox, Supra is permitted access to the loop spectrum when it purchases the UNE-P; therefore, this does not appear to be a disputed matter.

According to witness Nilson, BellSouth has stated in inter-company review board meetings that because of the final order in FPSC Docket No. 000731-TP, it will no longer be providing xDSL transport service to customers served by UNE combinations in Florida. Furthermore, on July 11, 2001 BellSouth sent a letter to Supra Business Systems, Inc. announcing the unilateral disconnection of all xDSL services provided over UNE Combinations. Additionally, in his testimony, witness Nilson addresses why he believes it is essential that BellSouth provide line splitters and that the issue of the line splitter be investigated; he also provides several arguments as to why "line sharing between ALECs doesn't exist in Florida at all."

2. Decision

Supra is not precluded from sharing with a third party the spectrum on a local loop for voice and data when Supra Telecom purchases a loop/port combination. As stated by BellSouth witness Cox, when Supra purchases UNE-P from BellSouth, it becomes the owner of all the features, functions and capabilities

that the switch and loop is capable of providing. This includes access to both the high and low frequency spectrum of the loop.

With regard to Supra's position that it must be compensated one half of the local loop cost when it utilizes the voice spectrum of the loop and another carrier utilizes the high frequency spectrum (or vice versa), Supra presented no evidence to support its position on this matter. Moreover, this would require Supra to contract with a third party, and as such we need not address this matter at this point.

With regard to the remaining issue, BellSouth asserts that it is not required to offer its tariffed xDSL service to Supra customers served via a UNE-P arrangement. We and the FCC have both concluded that BellSouth is only required to provide line sharing over loops where BellSouth is the voice provider. If Supra purchases UNE-P, it becomes the voice provider over that loop/port combination. Supra Telecom shall be allowed to share with a third party the spectrum on a local loop for voice and data when it purchases a loop/port combination (alternatively referred to as "line splitting"). In addition, BellSouth shall not be required to provide its DSL services to Supra's voice customers served via UNE-P.

Y. Downloads of RSAG, LFACS, PSIMS and PIC Databases

The issue before us in this section is to determine if BellSouth should be required to provide downloads of its RSAG (Regional Service Address Guide) and LFACS (Loop Facility Assignment Control System) databases. The scope of the issue has been narrowed since the filing of the petition as the parties have agreed to language regarding the PSIMS and PIC databases.

1. Arguments

BellSouth witness Pate testifies that BellSouth should not be required to provide downloads of RSAG because Supra already has real-time access to RSAG through BellSouth's "robust electronic interfaces." According to the witness, BellSouth makes available pre-ordering and ordering functionality which provides access to the necessary databases via LENS, TAG, RoboTAG, and EDI in a manner that is consistent with what the Act requires. Witness Pate contends that the Telecommunications Act does not require BellSouth to provide direct access to the same databases that it uses for its retail operations. However, the witness states that BellSouth is willing to resolve the issue by incorporating language agreed to with MCIm in which BellSouth will provide the RSAG data through a "mutually agreeable electronic means" once a "single mutually acceptable license agreement" has been executed.

In response to BellSouth's position, Supra witness Ramos asserts that Supra should be provided with "nondiscriminatory, direct access to these databases that BellSouth's retail departments enjoy." He contends that the ALEC interfaces provided by BellSouth to access its OSS are inadequate. Consequently, witness Ramos believes that anything less than direct access to these databases is discriminatory.

According to witness Ramos, there is no legitimate reason why Supra should have a different access than BellSouth's retail departments. He holds that "[W]hen BellSouth's internal OSS is malfunctioning, BellSouth retail departments have direct access to these databases." Conversely, the witness asserts that when CLEC pre-ordering interfaces are malfunctioning, Supra has no means of accessing the necessary databases. Witness Ramos contends that BellSouth is failing to provide parity in accordance with the Act and "should be required to provide downloads of the relevant databases as this would allow Supra to operate, albeit in a limited fashion, when the interfaces are

down."

2. Decision

We note witness Ramos's concerns that the ALEC interfaces provided by BellSouth to access its OSS, including the relevant databases, are inadequate, but we disagree that anything less than direct access to these databases is "discriminatory." To the contrary, BellSouth is not obligated by the Act to provide direct access to these databases. Specifically, FCC rule 47 C.F.R. § 51.319(g) states in part:

> An incumbent LEC shall provide nondiscriminatory access in accordance with §51.311 and section 251(c)(3) of the Act to operations support systems on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service.

Further, the FCC concludes in FCC 96-325, ¶312 that:

> ...the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself.

Additionally, FCC 96-325, ¶518, requires BellSouth to provide access to its OSS which allows ALECs to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for resale services in substantially the same time and manner as BellSouth does for itself. Thus, BellSouth is only required to provide non-discriminatory access to the databases that its retail departments use, and not direct access. Finally, we specifically concluded in Order No. PSC-98-1001-FOF-TP of Docket No. 980119-TP, in response to Supra's request for access to the very same interfaces that BellSouth uses for its retail service (including RSAG), that "BellSouth is not required to provide Supra with the exact same interfaces that it uses for its retail operations."

BellSouth has made pre-ordering and ordering functionality

available, as required by the Act, through the LENS, TAG, RoboTAG and EDI interfaces, which in turn provide access to the necessary databases. As such, we are not persuaded that BellSouth should be required to provide Supra with downloads of its RSAG database and should not be required to do so without license agreements or without charge. The parties may negotiate such an arrangement and any associated rates, terms, and conditions. The same analysis is applicable to requests made by Supra for download of BellSouth's LFACS database. BellSouth shall not be required to provide downloads of RSAG and LFACS databases without license agreements and without charge.

Z. Payment for Expedited Service

Here, we consider whether Supra Telecom should be required to pay for expedited service when BellSouth provides services after the offered expedited date, but prior to BellSouth's standard interval.

1. Arguments

BellSouth witness Cox adopted witness Ruscilli's prefiled direct testimony. Witness Cox contends that Supra should have to pay for expedited service as long as the order is completed before the standard interval. According to witness Cox, BellSouth is under no obligation to expedite service for Supra or any other ALEC. Since BellSouth charges its end users for expedited due dates, witness Cox believes Supra should pay these same expedite charges. Witness Cox observes that, "Supra does not want to pay the costs incurred by BellSouth to expedite due dates." According to witness Cox, BellSouth has offered to resolve this issue with the following language:

> Supra may request an expedited service interval on the local service request (LSR). BellSouth will advise Supra whether the requested expedited date can be met based on work load and resources available. For expedited requests for loop provisioning, Supra will pay the expedited charge set forth in this Agreement on a per loop basis for any loops provisioned in 4 days or less. Supra will not be charged an expedite charge for loops provisioned in five or more days, regardless of whether the loops were provisioned in less than the standard interval applicable for such loops.

Further, witness Cox questions why Supra is even raising

this issue, since Supra does not purchase stand alone UNE loops, the only product that is expedited, according to witness Cox.

Supra witness Ramos contends that BellSouth provides expedited service to its retail customers at no charge while denying Supra the same capability. According to witness Ramos, there is nothing to suggest that BellSouth's "standard" orders cost more than BellSouth's "expedited" orders. As such, witness Ramos believes BellSouth should not be allowed to charge a premium fee for expedited service under any circumstances. Witness Ramos alleges that BellSouth is merely trying to increase Supra's cost of competing with BellSouth. Witness Ramos contends that BellSouth should not receive additional payment when it fails to perform in accordance with a specified expedited schedule, but rather should have to give Supra a credit in such instances to address the cost of customer complaints.

Also, witness Ramos asserts BellSouth has willfully and intentionally failed to provide Supra with the same quality of service because it has not provided Supra with BellSouth's Quickserve. Quickserve is used to provide customers with expedited service in circumstances where the phone line at the location is already connected for service (i.e., has a soft dial tone). Witness Ramos states it is BellSouth's position that, because the word Quickserve is not contained in the agreement, BellSouth is under no obligation to provide it to Supra. Witness Ramos alleges this violates the parity provisions of the 1996 Act. Supra is at a competitive disadvantage because BellSouth has refused to set up a system that would allow Supra to use Quickserve to provide one day service like BellSouth, according to witness Ramos. Witness Ramos contends that while Supra can submit local service requests (LSRs) for Quickserve manually (i.e., via fax), they are generally provisioned later than electronically submitted LSRs. While BellSouth has developed a "workaround" that allows Supra to call in such orders, this workaround is unworkable, according to witness Ramos, because Supra customer service representatives have to hold as long as 45 minutes, trying to get a BellSouth representative to change a maximum of 3 orders per call. Witness Ramos views Quickserve as a competitive advantage for BellSouth, because it allows BellSouth to affirmatively state, where Quickserve is available, that a customer can receive service on the same day while Supra cannot. This practice is particularly vexing according to witness Ramos, in light of the fact that customers who convert from BellSouth to Supra must wait 5 to 12 days, even though the conversion is simply a billing change.

2. Decision

Based on a somewhat limited record on this issue, we find that denying BellSouth extra compensation for expedited orders not completed in a timely manner may encourage BellSouth to keep its promises that expedited orders will be completed by a certain date. The purpose for expedited service is so that service will be provisioned by a certain time, not merely to encourage BellSouth to try to do it a little quicker. If expedited service is not provisioned when promised, the ALEC loses the primary benefit of expedited service, i.e., the ability to affirmatively tell customers exactly when service will begin. We agree with Supra witness Ramos that ALECs may lose goodwill and customer confidence when they are unable to deliver expedited services on time because the ILEC was unable to meet the agreed upon date. Being able to provide timely expedited service more often may enable ALECs to more closely replicate the customer experience BellSouth provides. While BellSouth witness Cox states that expedite fees are pro-rated based on when the order is actually completed, this does not justify allowing BellSouth to charge a premium for failure to meet the expedited due date. Further, BellSouth failed to submit evidence in the record showing how expedited service increases BellSouth's costs of operation. This lack of justification for expedite charges provides further support for not allowing expedite charges when the service is not delivered as promised. Thus, Supra shall not be required to pay for expedited service when BellSouth provides the service after the promised expedited date, but prior to BellSouth's standard interval.

We do not believe that BellSouth should be required to create an electronic ordering system for Quickserve, or require BellSouth to provide free expedited service, as witness Ramos has requested. These requests exceed the scope of the issue. Further, Section 252 (b)(4)(A) requires, "The State commission to limit its consideration of any petition under paragraph(1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)." We note that these requests were not addressed in BellSouth's petition or Supra's response to BellSouth's petition. Therefore, we decline to grant Supra free expedited service or to require BellSouth to provide electronic ordering for Quickserve.

While we decline to grant Supra's request for electronic ordering of Quickserve in this docket, Supra raises meaningful

points about the value of electronic ordering. We are concerned by the testimony of witness Ramos noting that electronic Quickserve orders are provisioned quicker than manual orders which Supra must use, and that Supra customer service representatives have wait times as long as 45 minutes when trying to phone in Quickserve orders. We believe the issue of whether BellSouth should have to create an electronic ordering interface for ALECs that use Quickserve could be explored more effectively in the context of a generic proceeding.

We disagree with Supra that this issue is controlled by the commercial arbitration decision. Whatever force that award had, expired with the term of the previous agreement. In choosing the appropriate terms for this new interconnection agreement, we are not bound by the terms of that commercial arbitration.

AA. Identification of Order Errors

Herein, we consider whether BellSouth should be required to identify and notify Supra of all errors in the order at the time of the rejection. In addressing this matter, an underlying assumption in this issue is that Supra has submitted a service order to BellSouth, and for some reason BellSouth has not accepted it (e.g., BellSouth "rejected" the Supra order).

1. Arguments

Supra witness Ramos contends that BellSouth refused to provide information regarding its network, which resulted in Supra being restricted in developing its position on this issue through pre-filed testimony. Supra's position, therefore, is based upon its understanding of and response to BellSouth's position, according to the witness.

As with numerous other issues, Supra witness Ramos believes that "Parity Provisions" should be a consideration in this issue. Parity, according to witness Ramos, becomes an issue because BellSouth does not provide to Supra a real-time edit checking capability. BellSouth's retail OSS identifies errors and provides notification in real-time through its edit-checking capabilities, claims witness Ramos.

BellSouth places the responsibility on the ALEC (e.g., Supra) to submit a complete and accurate LSR, and thus avoid the resubmission of an order, according to witness Ramos. The Supra witness states that "[i]dentifying all errors in the LSR or order

will prevent the need for submitting the LSR or order multiple times." Witness Ramos claims that there have been numerous instances where Supra has had to track LSRs because BellSouth failed to notify Supra that the order was rejected. "Without first correcting the error in question and then resubmitting [the LSR] for further processing, other errors on the LSR cannot be identified," states witness Ramos. Through its proposed language, Supra believes that BellSouth should identify all reasons for a rejection in a single review of the LSR. Specifically, Supra has proposed the following language:

> BellSouth shall reject and return to Supra any service request or service order that BellSouth cannot provision, due to technical reasons, or for missing, inaccurate or illegible information. When a LSR or order is rejected, BellSouth shall, in its reject notification, specifically describe all of the reasons for which the LSR or order was rejected. BellSouth shall review the entire LSR or order, and shall identify all reasons for rejection in a single review of the current version (e.g., ver 00, 01, etc.) of the LSR.

BellSouth witness Pate acknowledges what Supra desires in this issue, but states that "the type and severity of certain errors may prevent some LSRs from being processed further once the error is discovered by BellSouth's system." The witness clarifies:

> An example of this type of error . . . is an invalid address. If the address is incorrect, the LSR cannot be processed further and will be returned to the ALEC [Supra]. This is because the address for a service request is a major determinate as to the services available from the central office serving switch. As a result, a LSR with an incorrect address must be returned to the ALEC [Supra] before additional edit checks are applied against the LSR for the specific services being requested.

Witness Pate believes that BellSouth's systems could not easily be modified to accomplish a comprehensive review of an ALEC's LSR. He states that "much work would be necessary to even evaluate what would be involved in modifying BellSouth's systems as proposed by Supra," and if so, any such modification could only be accomplished at "considerable time and expense." Witness

Pate asserts that Supra can avoid the issue of repeated submissions by rendering a complete and accurate LSR to BellSouth, and concludes his argument by offering that BellSouth is willing to incorporate the same language it offered to WorldCom.

2. Decision

This issue has broad implications with respect to BellSouth's OSS, and whether or not BellSouth should be obligated to modify a component of its OSS to meet the individual needs of an ALEC such as Supra. The issue at hand considers whether BellSouth should be required to identify and notify Supra of all errors in the order at the time of the rejection. The record reflects that what Supra is seeking in this issue would involve modifications to one or more of BellSouth's OSS systems, which would be a significant undertaking. In addition, we infer from witness Pate's testimony that such an undertaking may not be technically feasible.

We do agree with witness Ramos that "[i]dentifying all errors in the LSR or order will prevent the need for submitting the LSR or order multiple times," although we do not believe BellSouth is capable of accomplishing such a task without modifications to its systems, and even then, there is a question about the technical feasibility. Regarding the types and severity of errors in LSRs, BellSouth witness Pate asserts that "certain errors may prevent some LSRs from being processed further once the error is discovered by BellSouth's system." This is due to the fact that certain edit checks cannot be performed if an earlier, dependent edit check triggers a rejection.

If Supra is requesting that BellSouth modify its OSS to identify all errors in the order at the time of rejection, such a request would be better handled outside the confines of a §252 arbitration. Although concerned over the feasibility of modifying BellSouth's systems as proposed by Supra, a more comprehensive evaluation of electronic order processing may be helpful. Such an evaluation could be conducted in the context of a generic proceeding, which would enable us to more fully consider the technical feasibility and policy implications.

Supra can avoid the issue of repeated submissions by rendering a complete and accurate LSR to BellSouth; therefore, we decline to require BellSouth to modify its OSS to enable it to

identify all errors in the LSR at the time of the rejection. BellSouth shall, however, be required to identify all readily apparent errors in the order at the time of rejection.

BB. Purging of Orders

In this section, we address whether BellSouth should be allowed to drop (i.e., purge) Supra's LSR after 10 days or some other time period if Supra does not respond to BellSouth's request for clarification. We also consider whether BellSouth should be required to notify Supra on the day the LSR is purged.

1. Arguments

As with other issues, Supra witness Ramos believes that "Parity Provisions" should be a consideration in this issue. Parity, according to witness Ramos, is an issue because BellSouth does not purge its own retail orders after 10 days. Witness Ramos believes that BellSouth should not be allowed to purge LSRs when the LSR has passed the front-end ordering interface (such as LENS). He believes that if purged, BellSouth is skirting its responsibility to successfully complete the order. Witness Ramos states:

> Upon acceptance [of the front-end interface], completion of the LSR or order is the responsibility of BellSouth and such LSRs or orders should remain on BellSouth's system until their personnel resolve the clarification problems. Alternatively, if any LSRs or orders are dropped, BellSouth should be under an obligation to affirmatively notify Supra (electronically or in writing) within twenty-four (24) hours of the LSR or order being dropped.

The witness concludes that purging Supra's orders after 10 days is discriminatory, since BellSouth does not purge its own retail orders in a like manner. Further, witness Ramos advocates that this issue would be moot if Supra had direct access to BellSouth's OSS.

BellSouth witness Pate believes that Supra's own inefficiency is a factor in this issue. He asserts that the ALEC, not BellSouth, has the primary responsibility to its end-user with respect to ordering and tracking of service requests. He continues:

> BellSouth does not manage other ALEC's inefficiency and should not be expected to manage Supra's. Supra should be required to manage its ordering process and manage it in such a way that Supra has responsibility for ensuring that its representatives submit a complete and accurate LSR. Supra cannot and must not assume that BellSouth should handle this responsibility. Supra must take responsibility for managing its operation.

The witness states that when BellSouth returns a LSR to an ALEC for a clarification, it does so because the order is incomplete, incorrect, or has conflicting information. As a result, BellSouth is unable to issue the order(s) contained on the LSR.

Witness Pate offers that BellSouth provides complete ordering instructions for ALECs in a document titled the "BellSouth Business Rules" (BBR). The BBR is available to all ALECs, including Supra, and "provides a common point of reference to simplify the manual and electronic ordering processes for ALECs that conduct business with BellSouth," states the witness. The BBR contains provisions that address clarifications, including the information about responding to a clarification request. Witness Pate states that an ALEC has a maximum of ten (10) business days to respond to a clarification request with a supplemental LSR, consistent with the BBR. If a response is not received on the 10th business day, BellSouth cancels the LSR on the 11th business day, without any further notice, again, as provided in the BBR. BellSouth believes that ten (10) business days is an ample period of time for an ALEC to respond, and further, believes that it is not obligated to issue "reminder" notices when a response is not forthcoming.

2. Decision

Though framed as an issue about LSRs and clarification notifications, we believe the fundamental consideration in this issue is which party has the responsibility to the end-use customer for ordering and the ultimate provisioning of service. We agree with witness Pate that the ALEC, not BellSouth, has the primary responsibility to its end-user with respect to ordering and tracking of service requests. In the final analysis, witness Pate offers that "Supra should be concerned with the end-user satisfaction level."

The responsibility for a complete and accurate LSR rests with the ALEC, Supra. As witness Pate elaborated, when BellSouth

returns a LSR to an ALEC for a clarification, it does so because the order is incomplete, incorrect, or has conflicting information. BellSouth and the respective ALEC should be able to work through the clarification requests; an order that is incomplete, incorrect, or has conflicting information is of no use to BellSouth and cannot be provisioned until the clarification issue is resolved. The ALEC has a key role in this matter and, by implication, shares in the responsibility for the successful provisioning.

BellSouth provides complete ordering instructions for ALECs, including Supra, in the BBR. As previously stated, this set of instructions contains provisions that address BellSouth's requests for clarifications, including information about responding to these requests. Witness Pate states that an ALEC should properly respond to a clarification request by submitting a supplemental LSR. We note that Supra did not offer any testimony to support whether or not a 10 business day clarification response period was adequate, so can only conclude that 10 days is a reasonable period for an ALEC to submit a supplemental LSR. Furthermore, 10 business days represents a maximum, and an ALEC is not precluded from responding in a more expeditious manner.

An ALEC that has pending service order activity with BellSouth should be responsible for monitoring the provisioning process for its end use customers. If an ALEC was duly notified about the clarification request and has not responded to BellSouth within the 10 business day period, BellSouth should be allowed to cancel the LSR on the 11th business day without further notification, because the specific parameters for this occurrence are detailed in the universally-available BBR.

BellSouth witness Pate believes that Supra is advocating that BellSouth issue a "reminder" notice for orders that are about to be purged. The witness believes that imposing such an obligation on BellSouth would mask an ALEC's inefficiency. We agree, and note that the universally-available BBR offers fair warning to motivate the ALEC to be responsive, notwithstanding the ALEC's own reputation with its end-use customers if it is not responsive. Therefore, BellSouth shall not required to issue "reminder" notices when a LSR is about to be purged.

In summary, BellSouth shall be allowed to "purge" orders on the 11th business day after a clarification request, if a supplemental LSR is not submitted by Supra that is responsive to

the clarification request on the original LSR. Furthermore, no additional notification is necessary prior to the 11th business day when an LSR is about to be purged.

CC. Completion of Manual Orders

Here, we are being asked to determine if, for the purposes of the interconnection agreement between the parties, BellSouth should be required to provide completion notices for Local Service Requests submitted manually by Supra.

1. Arguments

BellSouth witness Pate contends that although BellSouth cannot provide the same kind of completion notification to Supra as when the order is submitted electronically, BellSouth does provide Supra with the "operational tools" necessary to determine the status of its orders on a daily basis, including manual orders. Witness Pate explains that BellSouth's CLEC Service Order Tracking System (CSOTS) provides ALECs with the capability to view service orders on-line, determine the status of their orders, including the status on manual orders, and track service orders.

Witness Pate states that "CSOTS interfaces with BellSouth's Service Order Communications System (SOCS) and provides service order information on a real-time basis for manually submitted and electronically submitted LSRs." According to witness Pate, CSOTS is available on BellSouth's website, and provides the ALEC community with access to the same service order information that is available to BellSouth's retail units, including the completion notification required by Supra. He states, "(R)egion wide, 320 ALECs are using CSOTS."

Supra witness Ramos contends that BellSouth should be required to provide completion notices to Supra for manual LSRs or orders. He testifies that a completion notice advises Supra that BellSouth has provisioned an LSR or order and that the customer has been switched over from BellSouth to Supra. Without this notice, witness Ramos asserts that Supra cannot accurately and efficiently determine if or when BellSouth has switched over service for a Supra customer. In order to properly bill its customer and provide maintenance and repair services, witness Ramos contends that Supra must have knowledge of the date that it actually began providing service to the customer. "[P]roviding Supra with a FOC (Firm Order Commitment)," witness Ramos states,

"and failing to provide service on the date requested coupled with a lack of notice, can only lead to a number of billing issues, including the potential of double-billing customers." Witness Ramos claims that this "double billing" harms Supra's reputation and its ability to generate revenue.

According to witness Ramos, the CLEC Service Order Tracking System (CSOTS) provided by BellSouth, does not provide a satisfactory alternative to an actual completion notice. He asserts that "[S]upra's representatives would be required to monitor CSOTs on a regular basis for completion indications (with the attendant errors that would flow from using such a process)." Although convenient for BellSouth, witness Ramos believes this system is "costly and inefficient" for Supra. He reasons that a system in which BellSouth provides Supra with an electronic or manual completion notice would be simpler and thus, "result in fewer errors and therefore fewer problems for Florida's consumers and both parties." Moreover, witness Ramos asserts that "since BellSouth service technicians report all completions to BellSouth for correct billing purposes, BellSouth is clearly failing to provide Supra with OSS parity on this issue."

2. Decision

We are not persuaded by the evidence presented in the record of this docket that BellSouth's CSOTS system is "costly and inefficient" for Supra. Although a process in which BellSouth provides an electronic or manual completion notice may be simpler for Supra, BellSouth is not obligated to provide completion notification to Supra that it does not provide to other ALECs or for its own retail service orders. Since information regarding the status of orders is made available to all ALECs on BellSouth's web-based CSOTS system, Supra is provided with sufficient real-time completion notification. As such, BellSouth shall not be required to provide completion notices for manual orders.

DD. Liability in Damages

In this portion of our Order, we consider whether the parties should be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreement for purposes of this interconnection agreement.

1. Arguments

Supra's witness Ramos argues that a party that is found to be in breach must be liable to the other in damages, without a liability cap. His position is that there should be no limitation on liability for material breaches of the agreement. Witness Ramos believes that absent significant penalties for intentional and willful noncompliance, or gross negligence, BellSouth will find it financially beneficial not to comply with the Act as well as its many contractual terms.

BellSouth witness Cox, contends that each party's liability arising from any breach of contract should be limited to a credit for the actual cost of the services or functions not performed or performed improperly. BellSouth states that limitations of liability clauses are standard practice in contracts, and can be found in BellSouth's tariffs for its retail and business customers. BellSouth does not believe Supra should be able to seek more damages as a result of a mistake by Supra than BellSouth's retail and wholesale access customers would have available to them.

2. Decision

The issue of our authority and obligations to arbitrate a damages liability provision must be determined in light of MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., Order on the Merits, issued June 6, 2000, in Case No. 4:97cv141-RH, 112 F.Supp. 2d 1286. Prior to Order on the Merits issued in WorldCom Telecommunication Corp. v. BellSouth Telecommunications, Inc., we had declined to arbitrate damages liability or specific performance provisions.

In Order on the Merits, the Court rejected our two arguments. Id. at 1297. We argued that we did not have the authority to arbitrate the liquidated damages issue because the liquidated damages issue was not an enumerated item to be arbitrated under Sections 251 and 252 of the Act. Id. Second, we argued that under state law we did not have the authority to mandate a compensation mechanism of this type. Id. The Court rejected our "narrow reading" of the arbitration provisions of the Act. Id.

The Court stated that the Act sets forth two methods that an incumbent carrier and a competitive carrier use to determine the terms and conditions of an interconnection agreement. Id. The Court noted that the first and preferable method is through

voluntary negotiation between the incumbent carrier and the competitive carrier. Id. The second method, applicable only to the extent voluntary negotiations fail, is arbitration of "any open issue." Id. The Court held that the statutory terms "any open issues" make it clear that the freedom to arbitrate is as broad as the freedom to agree. Id. The Court also found that any issue on which a party seeks agreement and is unsuccessful, may then be submitted for arbitration. Id. The Court concluded that because nothing in the Act foreclosed the parties from voluntarily entering into a compensation mechanism for breaches of the agreement, the damages issue became an open issue which a party was entitled to submit for arbitration. Id. Thus, the Court found that we were obligated to arbitrate and resolve "any open issue." Id.

However, the Court distinguished between our obligation to arbitrate and our obligation to adopt a provision of this type. Id. at 1298. The Court stated that had we, as a matter of discretion, decided not to adopt this type of provision, that the complainant would bear a substantial burden attempting to demonstrate that the decision was contrary to the Act or arbitrary and capricious. Id. The Court further found that if this type of provision was truly required by the Act and could be adopted in a form that would not impose an unconstitutional burden, then any contrary Florida law would not preclude the adoption of such a provision. Id.

Pursuant to Section 252(c) of the Act, a State Commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251. In U.S. West Communications v. MFS Intelenet, Inc. et. al., 193 F. 3d 1112 (9th Cir. 1999), the Court stated:

> State Commissions impose "appropriate conditions as required" **only** to "ensure that such resolutions and conditions meet the requirements of section 251." 47 U.S.C. Sections 252 (b)(4)(c), 252 (c)(1). (emphasis added)

Id. at 1125. While "any open issue" may be arbitrated, we may only impose a condition or term required to ensure that such resolutions and conditions meet the requirements of Section 251.

We make our determination on whether or not to impose a condition or term based upon whether the term or condition is

required to ensure compliance with the requirements of Sections 251 or 252. Liability for damages is not an enumerated item under Sections 251 and 252 of the Act. The record does not support a finding that a liability for damages provision is required to implement an enumerated item under Sections 251 and 252 of the Act.

Based on the foregoing, we decline to impose the adoption of a liability in damages provision.

EE. Specific Performance

Here, we consider whether a specific performance provision should be included in the agreement.

1. Arguments

BellSouth witness Cox argues that specific performance is a remedy, not a requirement of Section 251 of the 1996 Act, nor is it an appropriate subject for arbitration under Section 252. Further, specific performance is either available (or not) as a matter of law. Witness Cox states that to the extent Supra can show that it is entitled to obtain specific performance under Florida law, Supra can make this showing without agreement from BellSouth.

Supra witness Ramos believes that the inclusion of specific performance provisions serve as a deterrent to BellSouth from failing to abide by the terms of the Follow-On Agreement or otherwise from committing egregious acts when the benefit to BellSouth exceeds its potential liability. Witness Ramos acknowledges that in Docket No. 000649-TP, we found, based upon record evidence, that a specific performance provision is not necessary to implement the requirements of Section 251 or 252 of the Act. He does believe that the record in this proceeding along with the findings of the commercial arbitration award should allow the language proposed by Supra to be included in this agreement. Witness Ramos further asks that if we find that such provisions do not meet the requirements of Sections 251 or 252 of the Act, that "there be no mention of any limitation of remedies."

2. Decision

As explained in the previous section, in its Order on the Merits, the federal Court made it clear we have the authority and the obligation pursuant to the Act to arbitrate "any open issue." MCI v. BellSouth, 112 F.Supp. 2d at 1297. However, the Court does make a distinction regarding whether we are obligated to adopt a specific performance provision. Pursuant to Section 252 (c) of the Act, a State Commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251. See also U.S. West Communications v. MFS Intelenet, Inc. et. al., 193 F. 3d 1112 (9th Cir. 1999). While "any open issue" may be arbitrated, we may only impose a condition or term required to ensure that such resolutions and conditions meet the requirements of Section 251. The record does not support a finding that a specific performance provision is required to implement an enumerated item under Sections 251 and 252 of the Act. As such, we decline to impose a specific performance provision when it is not required under Section 251 of the Act.

FF. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of the Section 251, the provisions of FCC rules, applicable court orders and provision of Chapter 364, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that Supra Telecommunications and Information Systems, Inc.'s Motion for Rehearing, Appointment of a Special Master, and Indefinite Deferral, filed on February 18, 2002, and orally modified at the March 5, 2002, Agenda Conference, is hereby denied. It is further

ORDERED that Supra Telecommunications and Information Systems, Inc.'s Motion for Indefinite Stay, filed February 21, 2002, is hereby denied. It is further

ORDERED that Supra Telecommunications and Information Systems, Inc.'s February 27, 2002, Motion for Oral Arguments on Procedural Question Raised by Commission Staff and Wrongful Denial of Due Process, is granted, in part, and denied in part, to the extent set forth in the body of this Order. It is further

ORDERED that the issues for arbitration identified in this docket are resolved as set forth with the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 30 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 26th day of March, 2002.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site, http://www.floridapsc.com or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

WDK

DISSENT

Commissioner Palecki dissents from the Commission's decision on Issue B of the Arbitrated Issues in this Order.

COMMISSIONER PALECKI

I completely concur with my fellow Commissioners on all issues decided in this docket except for the single issue regarding whether this Commission should continue to be the forum for hearing disputes arising from Commission-approved interconnection agreements. I believe that refereeing these disputes between Florida's incumbent telephone companies and their competitors has been a poor use of Commission resources. Although I believe that our staff does an excellent job on these issues and that the Commission's decisions are well-supported and fair, Florida's ratepayers receive little value from these costly and inefficient exercises.

Section 364.337(5), Florida Statutes, grants the Commission continuing regulatory oversight over service provided by alternative local exchange companies for purposes of ensuring the fair treatment of all telecommunications providers in the marketplace. Section 364.162(2), Florida Statutes, authorizes (but does not require) the Commission to arbitrate disputes regarding interconnection agreements. Neither of these statutory provisions limit this Commission on how it shall arbitrate or ensure fair treatment. I believe these sections give the Commission adequate authority to require parties to engage in a two-part process that will conserve precious Commission resources, to include: (1) private arbitration to be paid for by the parties, followed by (2) a simple Commission review of the arbitrator's findings to ensure consistency with Commission policy and regulatory law.

At the March 5, 2002, agenda conference, Commissioner Baez suggested that this issue might be an appropriate matter to explore on a generic policy basis. I agree with my distinguished colleague.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.